

EXHIBIT B

Reppert, Sibley P.

From: Ralph Eckardt [ralph.eckardt@instituteofprogress.com]
Sent: Wednesday, July 16, 2008 4:00 PM
To: Reppert, Sibley P.
Subject: RE: Reexamining Inter Partes Reexam

Sibley,

Thank you for your interest in the report Reexamining Inter Partes Reexam.

The authors of the report are Ralph Eckardt ralph.eckardt@instituteofprogress.com and Mark Blaxill mark.blaxill@instituteofprogress.com

About the Institute for Progress

The Institute for Progress is an independent think tank whose purpose is to provide a rational perspective with insight and analysis about the role of intellectual property in promoting "the progress of science and the useful arts".

The Institute and its website are currently under development and we expect to have a more public announcement about our Fellows and the activities of the Institute in the near future.

About the Report

There have been a number of articles and blogs about the report, several of which address your questions about the source of the report. Here are some links that you should review, particularly numbers 2 and 5.

1. <http://www.iam-magazine.com/blog/Detail.aspx?g=975d3a09-38d2-4da9-ab3e-577de78f67a8>
2. <http://www.iam-magazine.com/blog/Detail.aspx?g=e04e7cee-72e2-445d-aa7d-f310c045f6d0>
3. <http://271patent.blogspot.com/2008/05/another-critical-study-on-inter-partes.html>
4. <http://www.patentlyo.com/patent/2008/05/patently-o-bi-5.html>
5. <http://www.ipfrontline.com/depts/article.asp?id=19270&deptid=8>
6. <http://ippharmdoc.blogspot.com/>

You should also be aware of a Dow Jones story by Stuart Weinberg entitled "Worried About That Infringement Case? Ask For A Reexam". It includes comment by the USPTO on the report. The full text is below:

Worried About That Infringement Case? Ask For A Reexam

**By Stuart Weinberg
Of DOW JONES NEWSWIREs**

TORONTO (Dow Jones)--Personalized Media Communication Inc. had been mired in a patent dispute with Thomson Inc. for three years when Thomson asked the U.S. Patent and Trademark Office to reexamine PMC's patents.

The PTO agreed. That was in 2003. Five years later, the reexamination process still isn't complete and PMC's case against Thomson remains on hold pending the outcome of the reexam. "For whatever reason, the (reexamination) system, as anticipated by statute and by Congress, just isn't working...", said Gerald

Holtzman, general counsel for PMC, a closely held New York company that holds patents related to digital television and Internet technology.

Patent reexamination is supposed to be a speedy alternative to litigation for determining patent validity. In 2005, the PTO created a Central Reexamination Unit tasked with processing reexaminations with "special dispatch." But, according to a recently released report, the reexam process takes far longer than commonly believed. The process is so lengthy that some defendants in patent-infringement suits are using it to augment their litigation strategy, the Institute for Progress, an independent think tank that does research on intellectual-property matters, said in its report.

"The reality is that this is becoming a business strategy on how to avoid having to deal with the real infringement issues," said Kevin Rivette, co-founder of the IFP and co-author of *Rembrandts In The Attic*, a seminal book on intellectual-property strategy.

The report, authored by IFP fellows Ralph Eckardt and Mark Blaxill, focused on inter partes reexaminations. Introduced by Congress in 1999, inter partes reexams allow third parties to participate in the process by responding in writing to issues raised by patent holders during reexam. Previously, third parties could only request ex parte reexams, which excludes them from the process after a reexam request is filed.

The report, which relied on publicly available PTO data, found that the number of inter-partes-reexam requests rose sixfold, from 24 in 2003 to 142 in 2007. It said 52% of patents subject to inter partes reexams were involved in litigation. The PTO granted reexam requests at a rate of about 95%, the report said. To be granted, a reexam request must raise a substantial new question of patentability.

Unappealed Exam Takes 43.5 Months

On average, inter partes reexams take 28.5 months to complete, according to the PTO. However, while "mathematically accurate," that statistic is "highly

misleading," the IFP found. That's because the PTO includes cases in which the patent holder didn't defend its rights. When those cases are excluded, the average pendency of an unappealed inter partes reexam is 43.5 months, the report said. When appeals are factored in, estimated-average pendency climbs to five-to-eight years, the report said, noting that only three inter partes reexams have been decided by the PTO's Board of Patent Appeals and Interferences.

Rivette, a former vice-president of intellectual-property strategy at International Business Machines Corp. (IBM) and current chairman of the PTO's Public Patent Advisory Committee, said the report wasn't meant as a condemnation of the PTO. Instead, it was written to highlight how defendants in patent litigation can take advantage of the disconnect between the court system and the PTO-reexamination process.

That disconnect allows defendants in infringement suits to request a reexam - knowing it will almost certainly be granted - then ask the court to stay its case until the reexam is finished, Rivette said. Obtaining a stay is an effective strategy because many patent holders have limited resources the delay can put them into financial distress, he said. If the patent holder is a public company, "huge amounts of shareholder value can be destroyed due to nothing more than a court staying a case pending a reexam," he said.

01 Communique Laboratory Inc. (ONE.T), a Toronto software company, found this out the hard way. On March 13, the company's stock plummeted to 18 Canadian cents from 86 Canadian cents after an Ohio court stayed 01's infringement case against Citrix Systems Inc. (CTXS) because the PTO granted Citrix's request to reexamine 01's patent. In Toronto Friday, 01 is trading at 18 Canadian cents.

On March 26, Avistar Communications Corp. (AVSR), a San Mateo, Calif. developer of unified communications software, announced plans to cut 25% of its staff, or 27 workers, after the PTO agreed to Microsoft Corp.'s (MSFT) request to reexamine all 29 of Avistar's patents. Avistar hadn't sued Microsoft but it

had held licensing discussions with the Redmond, Wash. software giant, according to the Avistar release announcing the layoffs.

Lawyers Use Reexam As A Selling Point

Some lawyers who specialize in intellectual property use reexaminations as a selling point. "Many people see reexam as a second bite at the apple for losing defendants," said Steven Sereboff, lawyer at Westlake Village, Calif.-based SoCal IP Law Group LLP, in an email. "We recommend taking the second bite early. We also use reexams to improve negotiating leverage, reduce the value of a patent, and to defer dealing with a problem patent. The utility of these goals depends in part on how quickly the USPTO can process reexams, and sometimes we want a slow process."

Sereboff, who runs a Web site called "Patent Assassins" with fellow SoCal lawyer Mark Goldstein, said reexams have always been a weapon in the litigation arsenal. He said he and Goldstein prefer to focus on identifying and exploiting quirks in the system, rather than opining on whether those quirks make for good or bad public policy.

John Love, Deputy Commissioner for Patent Examination Policy at the PTO, said in an email that, because inter partes reexaminations are relatively new, only a limited number have been requested or completed. "The nature of inter partes reexaminations allows for expanded participation in the process for the requester," he said. "The back and forth of filing papers and responses to papers complicates and lengthens the process. Ex parte reexams are much more limited."

The PTO is increasing its staff of senior examiners assigned to its Central Reexamination Unit, Love said. The PTO is also developing improved management information systems and analyzing the process to identify areas where efficiencies can be achieved, he said.

Due to the effort and expense involved in filing reexam requests, it's not surprising that most requests identify a significant new question of patentability, Love said.

Holtzman of Personalized Media Communications said Congress needs to "clean up the mess it created" by failing to set a time limit on reexaminations. He recommended an 18-month limit, which is the duration the International Trade Commission sets for its infringement investigations.

Holtzman added that judges should be more discerning when deciding if a PTO reexam merits a stay. "I think courts need to be cognizant of the fact that this has become a tactic and that, at the end of the day, most patents, or significant portions of patents, are in fact confirmed by the PTO: the result of the reexamine is forcing a patent holder to wait, and in many instances try to survive, before being able to enforce its rights," he said.

Company Web Sites: <http://www.uspto.gov>

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(END) Dow Jones Newswires

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From: Reppert, Sibley P. [<mailto:spr@lahive.com>]
Sent: Tuesday, July 15, 2008 4:57 PM
To: info@instituteforprogress.com
Subject: Rexamining Inter Partes Reexam

I am litigating a patent case that has just been stayed pending reexam, and would like to speak with the author(s) of your report, which I have provided to the court in connection with my request for reconsideration, and also to obtain more information about the Institute for Progress. Can you provide me with any more information, including the

contact information of the report's authors? I would much appreciate any information that will validate the report and establish the legitimacy of the Institute.

Many thanks,

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